

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HENRY ATTICA	:	CIVIL ACTION
	:	
v.	:	
	:	
KATHY BRITTAIN, ET AL.	:	NO. 22-1273

ORDER

AND NOW, this 31st day of January, 2024, upon careful and independent consideration of the Petition FOR Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, the Counseled and Amended Petition for Writ of Habeas Corpus, the Supplement to the Counseled and Amended Petition (collectively “the Petition for Writ of Habeas Corpus”) (Docket Nos. 1, 18, 21), and all attendant and responsive briefing, and after review of the Report and Recommendation of United States Magistrate Judge Carol Sandra Moore Wells, to which no objections have been made,¹ **IT IS HEREBY ORDERED** as follows:

1. The Report and Recommendation is **APPROVED** and **ADOPTED**.
2. The Petition for Writ of Habeas Corpus is **GRANTED** as to Petitioner’s third claim, that his trial counsel rendered ineffective assistance by failing to present three favorable witnesses at trial.
3. The Petition for Writ of Habeas Corpus is **DENIED** as to Petitioner’s first claim, that his trial counsel was ineffective for failing to object to the prosecutor’s evidentiary misstatements during closing argument, and his second claim, that his trial counsel was ineffective for failing to present testimony from Jeffrey T. Morrill, a fire science expert. However, we find that reasonable jurists could disagree about whether trial counsel was ineffective in connection with both of these claims and we **GRANT** a certificate of appealability with respect to Petitioner’s first and second claims for relief.
4. Petitioner’s fourth and fifth claims are procedurally defaulted and these claims are, therefore, **DISMISSED**. There is no basis for the issuance of a certificate of appealability with respect to Petitioner’s fourth and fifth claims.

¹ On January 5, 2024, counsel for respondents filed a letter in which he explicitly stated that “[t]he Commonwealth has thoroughly reviewed Judge Wells’s recommendations and has no objections to the R&R.” (Docket No. 33.)

5. Petitioner's convictions for conspiracy, arson, and risking a catastrophe are **VACATED**.
6. Within 180 days of the date of this Order, the Commonwealth shall **RETRY** Petitioner or release him from custody.

BY THE COURT:

/s/ John R. Padova

John R. Padova, J.